

SOCIOECONOMIC POLICY

MARYLAND JUDICIARY SOCIOECONOMIC POLICY Minority Business Enterprise Policy

.01 General-Purpose.

To ensure that maximum contracting opportunities will be extended to certified minority business enterprises and to establish the Office of Minority Business Enterprise to administer the Judiciary's Minority Business Enterprise Program under the management of the MBE Liaison who is accountable to the Chief Judge of the Court of Appeals. The MBE Liaison shall be responsible for coordinating the agency outreach efforts to the minority business community, reviewing Judiciary contracting procedures to ensure compliance with this section, assisting in the resolution of contracting issues and for maintaining statistical reporting information on the MBE Program.

.02 Application.

The Judicial MBE policies and procedures applies to the Court of Appeals, the Court of Special Appeals, the District Court of Maryland, the Administrative Office of the Courts, the Clerk of the Court offices of the Circuit Courts, and Court-Related Agencies.

This chapter applies to every procurement solicitation of the Judiciary that reasonably is anticipated to result in a contract award of \$50,000.00 or more. The Judiciary shall structure its procedures for procuring supplies, services, maintenance, and related general miscellaneous services so as to maximize contracting opportunities for certified minority business enterprises.

.03 Definitions.

- A. In this chapter, the following words have the meanings indicated.
- B. Terms Defined.
 - (1) "Certification" means a determination by the Maryland Department of Transportation for the purpose of certification as a Minority Business Enterprises.
 - (2) "Control" means the exercise of the power to manage and operate a business enterprise.
 - (3) "Joint venture" means an association of two or more persons to carry out a single business activity for a limited purpose or time.
 - (4) "Minority business enterprise" or "MBE" means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is at least 51 percent owned and controlled by one or more minority persons, or a nonprofit entity organized to promote the interests of the physically or mentally disabled. And is so certified by the Maryland Department of Transportation.
 - (5) Minority Person:
 - (a) "Minority person" means a member of a socially or economically disadvantaged group, which for purposes of this

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chapter includes African Americans (not of Hispanic origin), Hispanics, American Indians, Asians, women, and the physically or mentally disabled.

- (6) "Ownership" means:
 - (a) For a sole proprietorship, that the sole proprietor is a minority person. If the ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc., held by a nonminority person or business entity, the options, security interests, agreements, etc. held by the nonminority person or business entity may not significantly impair the minority person's ownership interest.
 - (b) For a partnership, that at least 51 percent of the partnership's assets or interests are owned by a minority person or minority persons. If the ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc. held by a nonminority person or business entity, the options, security interests, agreements, etc. held by the nonminority person or business entity may not significantly impair the minority person's ownership interest.
 - (c) For a corporation, that legal and equitable ownership of at least 51 percent of all classes of stock, bonds, or other securities issued by the corporation is owned by a minority person or minority persons. If an ownership interest held by a minority person is subject to formal or informal restrictions such as options, security interests, agreements, etc. held by a nonminority person or business entity, the options, security interests, agreements, etc. held by the nonminority person or business entity may not significantly impair the minority person's ownership interest.
- (7) "Procurement Unit" means a department or independent unit of the Judicial Branch.
- (8) "Solicitation notice" means public notice of a solicitation for bids, offers, or expressions of interest, which contains the nature of the procurement, relevant dates, the availability of solicitation documents, if any, and other pertinent information. The notice may consist of, but is not limited to:
 - (a) Legal advertisement;
 - (b) Newspaper notice;
 - (c) Bid board notice; or
 - (d) Bid or proposal documents including the invitation for bids or request for proposals.
- (9) MDOT means the Maryland Department of Transportation
- (10) MBE Liaison means a Judiciary employee who provides guidance to the Judiciary on MBE related matters.
- (11) MJPP means the Maryland Judiciary Procurement Policies
- (12) Subcontracting means one who participates, through a contract,

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subcontract, or lease agreement, in any matter covered by this program.

- (13) Direct Solicitation means the invitation for bids, request for quotations, request for proposals received by Minority Business Enterprises or any other method or instrument used to communicate to potential bidders or offerors the procurement needs of the Judiciary.

.04 MBE Liaison.

The Chief Judge of the Court of Appeals shall designate an employee to be an MBE Liaison for the Judiciary's minority business enterprise program. The MBE Liaison is responsible for coordinating Judiciary outreach efforts to the minority business community, reviewing Judiciary contracting procedures to ensure compliance, assisting in the resolution of contracting issues, and maintaining MBE program reports or information. The MBE Liaison shall be assigned to the office of Fair Practices/Minority Business Enterprise Compliance.

.05 Outreach.

- A. Outreach efforts to minority business enterprises shall advise them of contracting opportunities within the Judiciary.
- B. The MBE Liaison shall periodically conduct meetings with minority business enterprises, as appropriate, to advise of procurement opportunities within the Judiciary.
- C. The Office of Procurement and Contract Administration will support the MBE Liaison in all minority business initiatives by providing staff for all outreach activities and any information relating to upcoming procurement opportunities.

.06 MBE Notification.

- A. As part of the solicitation process being employed for the business community in general, and in addition to the public notice requirements, the MBE Liaison shall request that a copy of the solicitation notice be sent to certified minority business enterprises known to be providing the supplies, services, maintenance and miscellaneous services being procured. The notification should be sent to a sufficient number of certified MBEs as reasonably to assure one or more certified MBE responses to the solicitation.
 - (1) A minority business enterprise notification should contain a mandatory provision for all solicitations as follows:
"minority business enterprises are encouraged to respond to this solicitation".
 - (2) A copy of the solicitation notice for each procurement to the appropriate minority business associations, minority business assistance agencies, and trade organizations identified by the MBE Liaison. One copy of solicitation documents for these procurements shall be made available free of charge by the procurement department to these entities on request. The copy shall be marked "For Information Purposes Only".

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.07 Goal Assessment.

A. General.

- (1) The MBE Liaison shall assess the potential for certified MBE participation in each contract with an estimated value of \$50,000 or more, and the amount of participation expected under each procurement method described in section "B" (below) before the solicitation is let to prospective vendors.
- (2) The following factors shall be used to anticipate the degree of certified MBE participation:
 - (a) The extent to which the direct solicitation, subcontracting opportunity method, or combination of both methods is determined most likely to result in maximum certified MBE participation in the contract;
 - (b) The number of certified MBEs identified for a particular supply, service, maintenance, or miscellaneous service; and
 - (c) The feasibility of subcontracting opportunities, given the nature and extent of the proposed contract;

B. Solicitation Methods

- (1) Direct Solicitation. If known certified MBEs can provide the entire contract, then the MBE Liaison may recommend that MBEs only be solicited directly.
- (2) MBE Subcontract Method.
 - (a) Notwithstanding whether a direct solicitation is made under B(1) of this chapter, all contracts in excess of \$50,000 shall contain a certified MBE subcontract participation goal, expressed as a percentage of the dollar value of the contract, that the contractor shall attempt to subcontract to certified MBEs
- (3) Combination Procurement Method.
 - (a) A combination of direct solicitation and the MBE subcontract methods, pursuant to B(1) and (2) of this chapter, may be used when the MBE Liaison decides this method will be most likely to achieve the greatest degree of certified MBE participation.
 - (b) This solicitation shall contain all mandatory clauses.

C. Solicitation Content

- (1) Each solicitation identified by MBE Liaison as having subcontract opportunities shall contain the clauses required by Title 04.07 and Title 04.08. The solicitation shall also contain provisions requiring bidders or offerors to:
 - (a) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
 - (b) Attempt to make personal contact with the MBEs solicited and to document these attempts;
 - (c) Attend prebid, or other meetings the procurement department schedules to publicize contracting opportunities to MBEs.

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- (2) A bidder or offeror shall submit with its bid or proposal a completed certified MBE utilization affidavit on a form provided by the procurement department.
 - (3) The names of prime contractors requesting documents for contracts shall be made available on request to any certified MBEs who has an interest in subcontracting.
- D Prebid and Preproposal Conferences. When prebid or preproposal conferences are held, the MBE Liaison shall explain the certified MBE subcontracting goal if applicable, the MBE provisions of the solicitation, the documentation required, and its relationship to the determinations that will be made in connection with the evaluation process.
- E Federal Requirements. To the extent required by federal assistance instruments applicable to contracts let by the Judiciary under a federal assistance program, only those MBEs meeting federal requirements and criteria shall be used.

.08 MBE Contract Requirements.

- A. General.
 - (1) Accomplishment of Goal.
 - (a) A certified MBE prime contractor must meet the contract goals through use of subcontractors. MBE prime contractors will not be included as obtaining the contract goal for the use of their own workforce.
 - (b) A non-MBE prime contractor shall accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors.
 - (c) A prime contractor that consists of joint venture, MBE prime and non MBE prime, shall accomplish the contract goals through use of MBE subcontractors. The MBE prime contractors will not be included in obtaining the contract goal for the use of their own workforce.
 - (2) Each bid or offer submitted in response to this solicitation shall be accompanied by a completed MBE utilization affidavit, on forms provided by the MBE Liaison, whereby the bidder or offeror acknowledges the MBE participation goal and commits to make a good faith effort to achieve the goal.
- B. Additional Documentation:
 - (1) The documentation in B(2)-(6) of this chapter is considered as part of the contract. WHEREIN A REQUIREMENT THAT A BID OR PROPOSAL BASED ON A SOLICITATION WITH AN EXPECTED DEGREE OF MINORITY BUSINESS ENTERPRISE PARTICIPATION INCLUDE PROOF OF A CERTIFIED MINORITY BUSINESS ENTERPRISE COMMITMENT AT THE TIME OF SUBMISSION; AND IF DOCUMENTATION IS NOT FURNISHED, the BID or PROPOSAL WILL BE DEEMED NON-RESPONSIVE.
 - (2) A completed schedule of participation to include MJ EEO-003 and MJ EEO-004 shall be furnished, naming each certified MBE who will participate in the project and describes the:
 - (a) Contract items to be performed or furnished by each MBE and the

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- proposed timetable for performance; and
 - (b) Agreed prices to be paid to each MBE for the work or supply.
 - (3) An MBE subcontractor project participation statement shall be furnished and signed by both the bidder or offeror and each MBE listed in the schedule of participation, which includes:
 - (a) A statement of intent to enter into a contract between the prime contractor and each subcontractor if a contract is executed between the Judiciary and the prime contractor or, if the prime contract has been awarded, copies of the subcontract agreement or agreements; and
 - (b) The amount and type of bonds required of MBE subcontractors, if any.
 - (4) A list shall be furnished which includes:
 - (a) The contractor's compliance with the outreach efforts required under this chapter.
 - (b) Certified MBE subcontractors whom the contractor solicited; and
 - (c) Price quotes received from both minority and nonminority subcontract bidders.
 - (5) An affidavit shall be completed and signed by the prime contractor stating that, in the solicitation of subcontract quotations or offers, MBE subcontractors were given not less than the same information and amount of time to respond as were non-MBE subcontractors, and that the solicitation process was conducted in such manner as to otherwise not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.
 - (6) Other documentation considered appropriate by the Judiciary to ascertain bidder or offeror responsibility in connection with the contract MBE participation goal shall be furnished by the bidder or offeror.
 - (7) If the apparent successful bidder or offeror is unable to achieve the contract goal for MBE participation, the apparent successful bidder or offeror shall consult with the MBE Liaison and, if still unable to achieve the contract goal, may submit instead of, or in conjunction with, the schedule of participation a request in writing for a waiver as provided in this chapter.
 - (8) The contractor, by submitting the bid or offer, consents to provide the documentation requested by the Judiciary, and to provide right of entry at any reasonable time for the purpose of allowing the Judiciary's representatives to verify compliance with the MBE subcontractor requirements.
- C. Contracts Involving Subcontracts.
- (1) A contract involving subcontracts is subject to the MBE Liaison concluding that the apparent successful bidder or offeror meets the applicable certified MBE participation provisions contained in the solicitation.

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- (2) Upon review of the documentation, the MBE Liaison shall make a finding whether the apparent successful bidder or offeror has complied in good faith with the outreach efforts required in this chapter. If the MBE Liaison finds that the contractor has complied in good faith, the agency may not require the contractor to renegotiate any subcontract in order to achieve a different result.
- D. If the MBE Liaison determines that the apparent successful bidder or offeror has not complied with the certified MBE subcontract participation contract goal, and has not obtained a waiver in accordance with this chapter, or if the bidder or offeror fails to submit the documentation required by the solicitation, or fails to comply in good faith with the outreach efforts required in this chapter, the MBE Liaison, upon review may reject the bid or offer or cancel the award of the contract. The reasons for this action shall be specified in writing and mailed or delivered to the bidder or offeror.

.09 Waiver.

- A. If, for any reason, the apparent successful bidder or offeror is unable to achieve the contract goal for certified MBE participation, the bidder or offeror may request, in writing, a waiver to include the following:
 - (1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs in order to increase the likelihood of achieving the stated goal;
 - (2) A detailed statement of the efforts made to contact and negotiate with certified MBEs including.
 - (a) The names, addresses, dates, and telephone numbers of certified MBEs contacted; and
 - (b) A description of the information provided to certify MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed.
 - (3) To each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;
 - (4) A list of minority subcontractors found to be unavailable, which shall be accompanied by an MBE unavailability certification signed by the minority business enterprise, or a statement from the apparent successful bidder or offeror that the minority business refused to give the written certification; and
 - (5) The record of the apparent successful bidder's or offeror's compliance with the outreach efforts required in this chapter.
- B. A waiver of a certified MBE contract goal may be granted only upon a reasonable demonstration by the bidder or offeror that certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the MBE Liaison or designee determines that the Judiciary's interest is best served by a waiver. In making a determination under this section, the MBE Liaison or designee may consider catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other bids or offers and

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- subcontract bids or offers substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the Judiciary and any other relevant factor.
- C. The MBE Liaison may waive any of the provisions of this chapter for a sole source or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures in addition to consulting with the Director of Procurement and Contract Administration or his/her designee.
 - D. When a waiver is granted, except waivers under C of this chapter, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE Liaison Officer.

.10 Amendments for Unforeseen Circumstances.

If at any time before execution of a contract, the apparent successful bidder or offeror determines that a certified MBE listed on the schedule for participation has become or will become unavailable, then the apparent successful bidder or offeror immediately shall notify the MBE Liaison. Any desired change in the schedule for participation shall be approved in advance by the MBE Liaison and shall indicate the contractor's efforts to substitute another certified MBE subcontractor to perform the work. Desired changes occurring after the date of contract execution may occur only upon written approval by the Judiciary's MBE Liaison.

.11 Compliance and Administrative Sanctions

- A. To ensure compliance with certified MBE subcontract participation goals, the MBE Liaison shall verify that the certified MBEs listed in the schedule of participation are actually performing work and receiving compensation as set forth in the schedule. The contractor shall:
 - (1) Permit the MBE Liaison or designee to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers;
 - (2) Submit monthly to the MBE Liaison a report listing unpaid invoices over 30 days old received from a certified MBE subcontractor, and the reason payment has not been made; and
 - (3) Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors submit monthly to the MBE Liaison a report identifying the prime contract, and listing.
 - (a) Payments received from the contractor in the preceding 30 days, and
 - (b) Invoices for which the subcontractor has not been paid.
- B. Upon determining a contractor's noncompliance, the MBE Liaison shall notify the contractor in writing of its findings and shall specify what corrective actions are required. The contractor is required to initiate the corrective actions within 10 days and complete them within the time specified by the MBE Liaison.
- C. If the MBE Liaison determines that material noncompliance with MBE contract provisions exists and that the prime contractor refuses or fails to

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take the corrective action required by the MBE Liaison, then the following sanctions may be invoked:

- (1) Termination of the contract;
 - (2) Withholding payment or a percentage thereof, pending correction;
 - (3) Referral to the Director of Legal Affairs for appropriate action; or
 - (4) Initiation of any other specific remedy identified by the contract.
- D. Upon completion of the project, the MBE Liaison shall:
- (1) Prepare a report that compares the dollar value of the payments actually received by MBEs with the dollar value of the amount that MBEs were intended to have received under the contract's MBE participation goal; and
 - (2) Include in the report an explanation of any discrepancy.
 - (3) Prompt Payment of Subcontractors Mandatory provision for all Judiciary Contracts. The contractor shall promptly pay a subcontractor any undisputed amount to which the subcontractor is entitled for work under a contract for commodities, services, maintenance and general miscellaneous within 10 days of receiving a progress or final payment from the Judiciary.

.12 Mandatory Provisions for all Maryland Judiciary Contracts

- (1) This contract and all subcontracts issued under this contract are subject to the provisions of the Maryland Judiciary Procurement Policies, Title 07 – Mandatory Contract Provisions – All Contracts.
- (2) “Undisputed amount”,
- (3) Prime contractor”, and “Subcontractor” have the meanings as stated in the Maryland Judiciary Procurement Policies (MJPP).
- (4) A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or a notice of final payment for work under this contract.
- (5) If a contractor fails to make payment within the period prescribed in section 2, a subcontractor may request a remedy in accordance with procedure outlined in the MJPP. A contractor shall include in its subcontracts for work under this contract, wording that incorporates the provisions, duties, and obligations of section 1-4 of this chapter.

.13 Reporting.

- A. The MBE Liaison shall make a report annually within 90 days following the close of the fiscal year to the Chief Judge of the Court of Appeals.
- (1) The total number and value of its procurements from certified MBEs as prime contractors, and separately as subcontractors, by specific category of minority business enterprise;
 - (2) The percentages, by specific category of minority business enterprise, that represent the total number and value of its procurements for the fiscal year just ended; and
 - (3) The number of waivers granted pursuant to this chapter.

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Approved:

Robert M. Bell, Chief Judge
Court of Appeals

Date

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